demand it challenged the penalty charges imposed. Although by the contract between the parties the petitioner had reserved itself the right to impose the penalty for late payment, the imposition of it, in the face of the challenge which on the facts of the instant case it seemed to me was made *bona fide*, is an issue to be tried.

In the event, the section 218(2)(a) presumption that arose was rebutted whereupon the section 218(1)(e) position ceased to be available to the petitioner.

Apart from the section 218(2)(a) presumption there is nothing else to suggest that the company is anything but solvent.

The petition should not have been presented – at any rate was prematurely presented and should have been and was dismissed with costs.

Petition dismissed.

Solicitors: *Uppal & Koh; Chin & Co.*

TONG AH SENG & ANOR. v. CHAN SWEE LAN

[O.C.J. (Mohamed Dzaiddin J.) April 12 & May 17, 1984]

[Penang – Originating Motion No. 39 of 1983]

Practice & Procedure – Notice of Appeal – Service must be within reasonable time

Under the Subordinate Courts Rules 1980, there is no time limit required for the service of the Notice of Appeal on the respondent's solicitors. However, there must be service which must be within a reasonable time.

Cases referred to:–

(1) *Ratnam* v. *Cumarasamy* [1965] 1 M.L.J. 228, P.C.

(2) *Ahmad bin Yahaya* v. *Ahmad bin Sulaiman* [1972] 2 M.L.J. 109.

(3) *Cheah Teong Tat* v. *Ho Gee Seng & Ors.* [1975] 2 M.L.J. 149.

ORIGINATING MOTION.

Darshan Singh for the appellants.
Tan Beng Hong for the respondent.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: The Appellants have asked this Court for a declaration that the Notice of Appeal No. 4/83 dated 14th March 1983 served on the Respondent's solicitors on 29th April 1983 was properly and validly served and therefore within time. Alternatively, the time limit for serving the said Notice of Appeal on the Respondent be extended to two weeks from the date of this Order.

This application is supported by the affidavit of the Appellants affirmed jointly on July 30, 1983. It is deposed that on March 14, 1983 the Appellants filed the Notice of Appeal against the Order of the Magistrate given on March 9, 1983. The Notice of Appeal was served on the Respondent's solicitors on April 29, 1983, which is 37 days from the last day of filing the Notice. It is contended by the Appellants both in their affidavit and in the submission by their counsel that the Appeal had been properly brought because the Subordinate Courts Rules 1980 does not specify that the Notice to be served on the Respondent must be within any specified time. Counsel refers to Order 49 Rule 2(6) which states as follows:

"(6) The notice of appeal shall be served by the appellant on all parties directly affected by the appeal or their respective solicitors. It shall not be necessary to serve parties not so affected."

The Appellants have admitted in their affidavit that the Notice of Appeal was served on the Respondent's solicitors more than a month after the last day of filing of the Notice of Appeal. The grounds therein stated were delay due to change of solicitors as counsel then acting for them had discharged himself and another counsel had taken over the conduct of the matter. Then, when the present solicitors subsequently took over the conduct of the hearing, they filed the Notice of Appeal but their clerk made a mistake by not serving the Notice on the Respondent's solicitors until April 29, 1983. It is thus clear that failure to serve the said Notice of Appeal within time was due to the mistake or omission on the part of the solicitor's clerk.

Upon considering the relevant Order under the Subordinate Courts Rules 1980, I agree that there is no time limit required for the service of the Notice of Appeal on the Respondent's solicitors. However, there must be service which in my opinion must be within a reasonable time. In the present case, the parties are in Penang and the solicitors too have their practices in Penang and

in the circumstance of the case a period of 37 days is not reasonable time. Secondly, the mistake or omission on the part of the solicitors' clerk in not serving the Notice on the Respondent's solicitors earlier does not constitute material upon which I could exercise my discretion in favour of the Appellants. (*Ratnam* v. *Cumarasamy*[1]). Thirdly, counsel for the Appellants have submitted that the Appellants have good grounds of appeal both in law and in fact and they have exhibited a draft Petition of Appeal in their affidavit. Again, in my opinion the question of merit of the Appeal does not constitute 'special ground' upon which I can exercise my discretion in their favour (*Ahmad bin Yahaya* v. *Ahmad bin Sulaiman*[2]). In fact, similar issues were decided by the Federal Court in *Cheah Teong Tat* v. *Ho Gee Seng & Ors.*[3] with which I am bound.

For the above reasons this application is dismissed with costs.

Application dismissed.

Solicitors: *Darsham Singh & Co.; Tan Beng Hong & Co.*

P.M.K. RAJAH v. WORLDWIDE COMMODITIES SDN. BHD. & ORS.

[O.C.J. (Zakaria Yatim J.) July 19, 1984]

[Kuala Lumpur – Civil Suit No. C2523 of 1982]

Practice and Procedure – Anton Piller order obtained ex parte against defendants – Application for discharge of – Misrepresentation by plaintiff – Applicability of doctrine of self-incrimination in Malaysia – Discharge of Anton Piller order.

The first, second, sixth and seventh defendants sought for an order of the court to discharge an *Anton Piller* order granted on December 30, 1982. The defendants contended that (a) the plaintiff had misled the court by stating in his affidavit in support of the *ex-parte* application that the first defendant was required by law to keep a segregated bank account in respect of the plaintiff and (b) it was not possible to show the trading statements to the solicitors of the plaintiff without disclosing particulars of other clients which were confidential in nature. The production of the documents referred to in the order would incriminate the defendants by providing evidence on which they could be prosecuted for offences under the Commodities Trading Act 1980 and for conspiracy and fraud.

Held, allowing the defendant's application: (1) the plaintiff had made a false assertion in his affidavit in support of the *ex-parte* application, which led the court to grant the first part of the order. If in applying for and obtaining an *ex-parte* order the plaintiff had either misrepresented or suppressed material facts, the order would be dissolved on that ground alone;

(2) the principle laid down in *Rank's* case[3] applies in this case;

(3) the defendants were entitled to the privilege not to give discovery of documents, the disclosure of which would incriminate them.

Cases referred to:

(1) *Sari Artists Film Productions Sdn. Bhd.* v. *Malaysia Film Industries Sdn. Bhd.* [1974] 1 M.L.J. 123, 124.
(2) *Leong Wan Yin & Anor.* v. *Nestra Plantations Sdn. Bhd.* [1982] 2 M.L.J. 65, 66.
(3) *Rank Film Distributors Ltd. & Ors.* v. *Video Information Centre & Ors.* [1980] 2 All E.R. 273 (C.A.), [1981] 2 All E.R. 76, (H.L.).
(4) *Television Broadcasts Ltd. & Ors.* v. *Mandarin Video Holdings Bhd.* [1983] 2 M.L.J. 346.
(5) *M.P. Sharma* v. *Satish Chandra* [1954] S.C.R. 1077.
(6) *The State of Bombay* v. *Kathi Kalu* [1962] 3 S.C.R. 10.

CIVIL SUIT.

R.R. Chelliah for the first, second, sixth and seventh defendants.
Ravindran for the plaintiff.

Cur. Adv. Vult.

Zakaria Yatim J.: In this notice of motion, the first, second, sixth and seventh defendants are seeking for an order of the Court to discharge an *Anton Piller* order granted on December 30, 1982.

The order was made on an *ex-parte* application by the plaintiff. It stated that:-

"The 1st. Defendant whether acting by their Directors, Officers, Servants or Agents or any of them or otherwise howsoever do permit a solicitor from the firm of M/s Sham Sunder & Partners of Lot 4.1, 4th Floor, Wisma Shen, Jalan Masjid India, Kuala Lumpur one other employee of the Plaintiff's said Solicitors and such other persons not exceeding three in number as may be duly authorized by the Plaintiff together with the Bailiff of this Court to enter and remain upon the premises of the 1st. Defendant's at Hong Kong and Shanghai Bank Building, 11th Floor, No. 2, Leboh Ampang, Kuala Lumpur at any hour between 8.00 o'clock in the forenoon and 6.00 o'clock in the evening for the purpose:-

(a) of taking into possession and removal therefrom into the possession and custody of the plaintiff's said Solicitor